

1 Kolin C. Tang (SBN 279834)
2 **SHEPHERD, FINKELMAN, MILLER**
3 & SHAH, LLP

4 1401 Dove Street, Suite 540
5 Newport Beach, CA 92660
6 Telephone: (323) 510-4060
7 Facsimile: (866) 300-7367
ktang@sfmslaw.com

8 *Counsel for Plaintiffs, on behalf of themselves*
9 *and all others similarly situated*

10 [Additional Counsel on Signature Page]

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 BILL SCHEPLER and ADRIAN
14 GARCIA, On Behalf of Themselves and
15 All Others Similarly Situated,

16 Plaintiffs,

17 v.
18 AMERICAN HONDA MOTOR CO.,
19 INC.,

20 Defendant.

21) CASE NO. 2:18-cv-6043-GW-AFM
22) Assigned to: Hon. George H. Wu
23) Courtroom: 9D
24)
25) **PLAINTIFFS' NOTICE OF**
26) **MOTION AND MOTION TO**
27) **LIMIT CONSIDERATION OF**
28) **THE EXPERT REPORT OF**
29) **DOUGLAS YOUNG, PH.D.;**
30) **MEMORANDUM OF POINTS**
31) **AND AUTHORITIES**
32)
33) Date: October 1, 2020
34) Time: 8:30am
35) Place: United States Courthouse
36) 350 West 1st Street
37) Los Angeles, CA 90012
38) Courtroom 9D, 9th Floor
39)
40)

1 **NOTICE OF MOTION AND MOTION TO LIMIT CONSIDERATION**

2 **TO DEFENDANT AND ITS ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE THAT ON October 1, 2020, at 8:30 AM, in
4 Courtroom 9D of the United States District Court for the Central District of
5 California, before the Honorable George H. Wu, Plaintiffs, Bill Schepler and
6 Adrian Garcia (collectively, “Plaintiffs”), will, and hereby do, move the Court to
7 limit its consideration of the report and testimony of Douglas Young, Ph.D (“Dr.
8 Young”) in connection with their Motion for Class Certification (“Mot. for Class
9 Cert.”).

10 Pursuant to Ninth Circuit authority set forth in *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1006-07 (9th Cir. 2018), the Court does not determine
11 admissibility at the class certification stage. As such, Plaintiffs only ask the Court
12 to afford little or no weight to Dr. Young’s conclusions and opinions because they
13 fail to satisfy the standard of Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

14 The Court need not grant this Motion in order to grant class certification.
15 Because Defendant, American Honda Motor Co. Inc. (“Defendant” or “AHM”)
16 offers Dr. Young’s opinions and report (Pl. Ex. WW (also filed at Dkt. No. 91-5)
17 (Report of Douglas Young, Ph.D. dated June 11, 2020) (“Pl. Ex. WW”)) in support
18 of its Memorandum of Law in Opposition to Plaintiffs’ Motion for Class
19 Certification (Dkt. No. 93) (“Opposition”), its Motion for Summary Judgment on
20 Plaintiff Adrian Garcia’s Claims (Dkt. No. 91-3) (“MSJ”), and its Motion to
21 Exclude the Report and Testimony of Gary Whitman (Dkt. No. 91-2) (“MTE
22 Whitman”), the Court should consider the relevant *Daubert* factors and afford Dr.
23 Young’s opinions no weight.

1 Plaintiffs only move at this time with respect to Dr. Young's opinions that
2 are referenced in AHM's Opposition, MSJ, and MTE Whitman, and reserve the
3 right to seek exclusion of all of Dr. Young's opinions prior to trial.

4 This motion is made following the conference of counsel pursuant to Local
5 Rule 7-3, which took place on July 30, 2020 via teleconference. Defendant
6 opposes this Motion.

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28 PLAINTIFFS' MOTION TO LIMIT CONSIDERATION OF EXPERT REPORT AND TESTIMONY OF
DOUGLAS YOUNG, PH.D. CASE NO. 8:15-cv-01985 CAS (Ex)

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INTRODUCTION

2 Plaintiffs' theory of this case is that the rear seat belt configuration of the
3 2017-2018 Honda CR-V ("Class Vehicle(s)" or "CR-V(s)") is defective, unsafe,
4 and, thus, cannot safely seat three passengers, with or without child safety seats.
5 Pl. Mot. for Class Cert., Dkt. No. 81, at 3. Plaintiffs' expert, Gary R. Whitman
6 ("Whitman"), used the same methodology to conclude that there was a defect in
7 the rear seat design that AHM's expert, William W. Van Arsdell, Ph. D., P.E. ("Dr.
8 Van Arsdell"), used to come to the opposite conclusion. In so doing, Dr. Van
9 Arsdell did not rely on any qualitative standards, test any components, or rely on
10 Dr. Young's Report.

11 AHM apparently hired Dr. Young separately to provide an independent basis
12 to contradict Whitman’s conclusions. So, Dr. Young invented a test procedure that
13 was designed for one thing—to arrive at the predetermined conclusion that the CR-
14 V’s rear seat belt configuration is not defective and not unsafe. Dr. Young’s first-
15 of-its-kind study purportedly measured the time it takes to buckle and unbuckle a
16 seat belt in various scenarios and evaluated the “handling strategies” and “visual
17 behavior” of the participants during the buckling and unbuckling process. He then
18 applied that quantitative and qualitative “data,” which were both subjectively
19 recorded, as discussed below, to an unintelligible metric (as a proxy for a non-
20 existent standard), upon which Dr. Young predictably concludes that “[t]he design
21 characteristics of the rear center and outboard seat belt restraints of the subject CR-
22 V do not create delays or safety concerns related to handling, buckling, or
23 unbuckling for adult occupants.” Pl. Ex. WW at 26.

24 In so doing, Dr. Young not only failed to use reliable and scientific methods,
25 but he also ignored the implications of the questionable timing data that he
26 recorded. Ironically, the timing data, to the extent it can even be relied upon,
27 actually validates Plaintiffs' theory that the rear seat belt configuration is unsafe.

1 As such, in addition to his methodological problems, Dr. Young's conclusions are
 2 either irrelevant, unsupported, or based on arbitrary benchmarks. Because each of
 3 Dr. Young's conclusions is unreliable, irrelevant, or both, the Court should afford
 4 little or no weight to his Report and testimony.

5 **BACKGROUND**

6 AHM retained Dr. Young to "analyze and evaluate the human factors and
 7 human performance issues" in this case. Pl. Ex. WW at 2. Dr. Young described
 8 "human factors" in his deposition as "traditionally . . . man-machine interactions
 9 . . . including those that occur in everyday situations." Pl. Ex. QQ (Deposition of
 10 Douglas J. Young) at 33:17-24. Not surprisingly, then, Dr. Young is not "an
 11 expert in seat belt safety." *Id.* at 24:3-13. Although he has received compensation
 12 from nearly every automobile company in the country (*id.* at 14:5-15:24), he is also
 13 not an expert in seat belt or automotive design, Federal Motor Vehicle Safety
 14 Standards ("FMVSS"), or National Highway Traffic Safety Administration
 15 standards. *Id.* at 23:4-27:3; 89:6-10. Further, Dr. Young has never "designed and
 16 implemented a study that was specifically intended to measure timing differentials
 17 with respect to buckling and unbuckling seat belts as between a specific vehicle
 18 and comparator vehicles." *Id.* at 50:2-9. Dr. Young did not rely on any of
 19 Honda's¹ usability studies, did not utilize any field data (such as information about
 20 how Plaintiffs and Class members described their problems with the safety of the
 21 configuration and its usability), did not use FMVSS or other guidelines, and did
 22 not consider inadvertent release, emergency conditions, or children seated in the

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 25
 26 ¹ "Honda," as used herein, refers to AHM's Japanese parent company, Honda
 27 Motor Company, Ltd.

1 CR-V. *Id.* at 55:8-23; 58:21-25; 66:8-67:7; 73:4-25; 92:6-94:23.²

2 **I. Dr. Young's Studies and Data**

3 Dr. Young performed certain studies, the results of which he included in his
 4 Report. The first study, in addition to the 2017 Honda CR-V, included the 2017
 5 Nissan Rogue, 2017 Toyota RAV4, and 2018 Subaru Forester. In his second
 6 study, Dr. Young included two additional vehicles, a 2017 Ford Escape and 2017
 7 Chevrolet Equinox. Each of the vehicles, except for the Subaru Forester and Ford
 8 Escape, incorporated center rear seat belts that crossed over an outboard seat belt,
 9 similar to the CR-V.

10 Dr. Young had the participants enter the vehicle and don and doff the left
 11 rear seat belt. In Study 1, this was done under three conditions: (1) nothing
 12 occupying the center occupant position; (2) an adult dummy in the center rear
 13 occupant position, wearing the center rear lap/shoulder belt; and (3) a child
 14 restraint secured in the center rear occupant position. Study 2, which involved
 15 only three participants, was performed under two conditions: (1) nothing
 16 occupying the center occupant position; and (2) an adult dummy in the center rear
 17 occupant position, wearing the center rear lap/shoulder belt.

18 Each of the vehicles was set up with three GoPro cameras, one of which was
 19 mounted inside on the roof to capture the entirety of the rear seat, a second that
 20 was mounted to the front driver's seat to capture the driver's side of the rear seat,
 21 and a third that was mounted to the front passenger's seat to capture the
 22 passenger's side of the rear seat. Pl. Ex. WW at 14. The timing measurements
 23 presented in Dr. Young's Report were based on two research assistants viewing the
 24 GoPro footage (although it is not clear which camera or cameras they viewed),

25

26 ² In fact, according to his Report, Dr. Young relied on just the operative complaint,
 27 class certification briefing, Plaintiffs' expert's reports, and depositions of Whitman
 and Honda's representative, Makoto Tsurata. Pl. Ex. WW at 4.

1 listening for the buckling and unbuckling “clicks,” and documenting the time of
 2 the “clicks” to the nearest whole second (the GoPro cameras did not account for
 3 tenths of seconds, for example). Pl. Ex. QQ at 108:18-109:8. The two individuals
 4 were intended to serve as a cross-check for one another, and when they disagreed,
 5 instead of averaging the times they respectively noted, they had a discussion about
 6 their differences until they could come to a resolution, which discussion was
 7 unrecorded. *Id.* at 113:15-114:11. Dr. Young posited that this was “[s]tandard
 8 practice with regard to video analyses,” but did not point to any academic or
 9 scientific literature demonstrating this methodology. *Id.* at 114:12-23. Further, Dr.
 10 Young could not point to any FMVSS guidance, SAE guidelines, or any specific
 11 academic or scientific literature where this method of time measurement was
 12 utilized. *Id.* at 101:3-102:23.

13 Each study participant was allowed practice trials—an opportunity to
 14 practice buckling and unbuckling the seat belts at each seating position of each
 15 vehicle. Pl. Ex. WW at 15; Pl. Ex. QQ at 86:2-24; 102:25-104:24. These practice
 16 trials were not captured by the GoPro cameras, the timing of these trials was not
 17 measured or reported, and the timing of these trials was not factored into the
 18 averages that Dr. Young presents in his Report. *Id.* at 103:15-24. In requiring his
 19 participants to practice buckling and unbuckling the seat belts at each rear seating
 20 position in each vehicle before the cameras began rolling, Dr. Young admittedly
 21 ignored “the extent to which extended trials and practice would change
 22 performance outcomes.” *Id.* at 88:6-18.

23 Dr. Young then reported the average times, excluding the practice trials,
 24 that it took participants to buckle and unbuckle the rear outboard seat on the same
 25 side as the rear center seat shoulder strap across all vehicles for when the rear
 26 center seat was empty, contained a dummy, or contained a car seat. Pl. Ex. WW at
 27 16-17 (Table 1). Dr. Young’s data show that for ***all of the vehicles with crossed-***

1 ***belt configurations, it took participants longer to buckle and unbuckle*** their seat
 2 belts when the rear center seat was occupied compared to when the rear center seat
 3 was empty. *Id.* Further, the data show that it took longer, on average, for
 4 participants to buckle and unbuckle in every vehicle with crossed-belt
 5 configurations compared to the vehicle with an uncrossed-belt configuration. *Id.*;
 6 *see also* Pl. Ex. II ¶¶ 10-12.

7 Notably, the data shows that in the Subaru Forester, which has the
 8 uncrossed-belt configuration, it took an average participant approximately 13%
 9 longer to buckle when there is an occupant in the middle seat compared to when
 10 the middle seat is empty. By contrast, the data showed that in the CR-V, which has
 11 the crossed buckles at issue in this action, it took an average participant **71%**
 12 longer to buckle when the middle seat was occupied compared to when the middle
 13 seat was empty. Pl. Ex. QQ at 115:4-118:13; Pl. Ex. II ¶ 10. Likewise, the
 14 difference between buckling with an empty middle seat versus a child seat in a
 15 Forester was approximately 11%, while the difference for the CR-V was **91%**. Pl.
 16 Ex. QQ at 123:15-125:15. Similarly, the data from Study 2 shows that, on average,
 17 it took participants in the vehicles with crossed-belt configurations (like the CR-V)
 18 longer to buckle and unbuckle their seats when the rear center position was
 19 occupied by a dummy than it did in the vehicles with uncrossed-belt
 20 configurations. Pl. Ex. WW at 19-20; *see also* Pl. Ex. II ¶¶ 10-12.

21 Dr. Young admitted that the increased times are “more apparent for the four
 22 vehicles that have crossover designs relative to the Forester, which does not.” Pl.
 23 Ex. QQ at 125:6-8. However, he insisted that this significant percentage increase
 24 was not a “material difference.” *See id.* at 124:19-126:23. When asked what
 25 metric, standard, test, or analysis he employed in determining whether timing
 26 differentials constituted a “material difference,” Dr. Young could not articulate
 27 anything meaningful, but instead, provided the following non-explanation:

I would say the following: That this study evaluates the ease of use of the buckle systems that are in a variety of vehicles; vehicles that have similarities and differences, vehicles that are those that have been purchased quite a bit by the general motoring public. In fact, I believe these are the highest-selling vehicles for the most part in this class, and that the handling of these seat belts are essentially the same across the design characteristics when you consider the ways in which individuals buckle and unbuckle their belts, how they handle the belts, what they're doing in terms of moving their limbs in certain ways, what they're doing in terms of where they're looking. And when you have these things taken together, what you see is that these designs don't affect ease of use. And more specifically with regard to handling in terms of emergency situations, I wouldn't see any differences from the observations I've made from when one individual leans left from the center position over to the left rear occupant position.

Id. at 131:2-24. In other words, Dr. Young was unable to identify any actual metric whereby a timing differential would constitute a "material difference," in terms of buckling or unbuckling a seat belt, while insisting that the significant percentage differences in the timing, other than on their face, were not a "material difference."

Seemingly unrelated to Studies 1 and 2, Dr. Young also conducted an observational "surrogate evaluation," but did not quantify the data in any way—it was not videotaped, there was no measurement of timing to buckle or unbuckle, and there was no data reported. *Id.* at 132:4-134:4.³ Without *any* standard or data

³ Surrogates 1 and 2 sat in the CR-V, Rogue, Forester, and RAV4, and Surrogates 3 and 4 sat in the Escape and the Equinox. Pl. Ex. WW at 20-21. With both sets of surrogates, he placed one surrogate in the rear driver's side position, one surrogate in the rear center position, and then a dummy in the rear passenger's position. *Id.* He then had the surrogates buckle their seat belts, and the rear center surrogates leaned forward and to the left, on to the surrogates in the rear driver's side position. *Id.* The surrogates in the rear driver's side position then unbuckled their seat belt and exited the vehicle. *Id.* The surrogates then switched positions and repeated the process. *Id.*

1 to support his claims, Dr. Young opines that he “observed no appreciable
 2 differences in buckling and unbuckling for the rear outboard surrogates in any of
 3 the six vehicles when the center passenger was leaning in their direction.” Pl. Ex.
 4 WW at 21.

5 Dr. Young also included in his Report various “human factors analyses”
 6 based on handling of the seat belts, gazing, variability, and other factors that he
 7 contends somehow impact how long it may take a user to buckle or unbuckle a seat
 8 belt. *See* Pl. Ex. WW at 12-13 (explaining some “seat belt fastening behaviors”);
 9 *id.* at 22-25. However, Dr. Young failed to explain why variations in hand
 10 placement (Figures B4, B5, B6) or gaze direction (Figures B7, B8, B9) support his
 11 conclusions. These “human factors” are only material to the inquiry being tested if
 12 they have an impact on how quickly or slowly a participant was able to buckle or
 13 unbuckle their seat belt, ***which would already have been reflected in the time it***
 14 ***took each individual to do so.*** Dr. Young couches his conclusions in terms of the
 15 times it took to buckle and unbuckle, and not in terms of these irrelevant
 16 observations (Pl. Ex. WW at 18-19). although he was not able to clearly identify a
 17 metric to measure what would qualify as a “material difference” between different
 18 vehicles’ average buckling and unbuckling times.

19 LEGAL STANDARD

20 Under Ninth Circuit law, the Court may not make determinations of
 21 admissibility or inadmissibility under *Daubert* at the class certification stage. The
 22 Court should, however, consider the *Daubert* factors and give no weight to Dr.
 23 Young’s opinions, certain of which are irrelevant and all of which are unreliable,
 24 given that they are based on untested assumptions and deeply flawed methodology.

25 The Ninth Circuit explained that, with respect to admissibility of expert
 26 testimony in connection with class certification:

1 [I]n evaluating challenged expert testimony in support of class
 2 certification, a district court should evaluate admissibility under the
 3 standard set forth in *Daubert*. *Ellis*, 657 F.3d at 982. **But admissibility**
 4 **must not be dispositive**. Instead, an inquiry into the evidence's ultimate
 5 admissibility should go to the weight that evidence is given at the class
 6 certification stage.

7 *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1006-07 (9th Cir. 2018) (emphasis
 8 added).

9 Expert testimony must be both relevant and reliable. *See Daubert v. Merrell*
 10 *Dow Pharm., Inc.*, 509 U.S. 579, 591 (1993) ("[T]he Rules of Evidence—
 11 especially Rule 702—do assign to the trial judge the task of ensuring that an
 12 expert's testimony both rests on a reliable foundation and is relevant to the task at
 13 hand."); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999) (noting that
 14 Rule 702 "imposes a special obligation upon a trial judge to ensure that any and all
 15 scientific [and expert] testimony . . . is not only relevant, but reliable"). But,
 16 "scientific expert testimony carries special dangers to the fact-finding process
 17 because it 'can be both powerful and quite misleading because of the difficulty in
 18 evaluating it.' . . . Federal judges must therefore exclude proffered scientific
 19 evidence under Rules 702 and 403 unless they are convinced that it speaks clearly
 20 and directly to an issue in dispute in the case, and that it will not mislead the jury."
 21 *Daubert v. Merrell Dow Pharm., Inc.*, 4 F.3d 1311, 1319 (9th Cir. 1995) (quoting
 22 *Daubert*, 509 U.S. at 595).

23 There is no exhaustive list of factors by which judges determine the
 24 reliability of expert testimony. "Many factors will bear on the inquiry," and courts
 25 have not "set out a definitive checklist or test." *Daubert*, 509 U.S. at 593; *Estate of*
 26 *Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir. 2014) (citing *United*
 27 *States v. Hankey*, 203 F.3d 1160, 1167 (9th Cir. 2007)). However, the "soundness
 28 of [an expert's] methodology" is crucial in keeping with reliability standards.

1 *Estate of Barabin*, 740 F.3d at 463.

2 **ARGUMENT**

3 In addition to creating his own unintelligible standard to reach his
4 predetermined conclusion consistent with AHM's safety expert, Dr. Van Arsdell,
5 Dr. Young's conclusions that "[t]he design characteristics of the rear center and
6 outboard seat belt restraints of the subject Honda CR-V do not create delays or
7 safety concerns related to handling, buckling, or unbuckling for adult occupants"
8 are unreliable, contain grave methodological deficiencies, and ignore the actual
9 data. Further, certain of Dr. Young's opinions are irrelevant. For all of these
10 reasons, his opinions should be given limited weight.

11 **I. Dr. Young's Conclusions Are Not Reliable and Ignore the Actual**
12 **Data He Collected**

13 Dr. Young can point to no industry or scientific standard to support his
14 testing of the time it takes to buckle and unbuckle seat belts. Moreover, although
15 he opined that there was no evidence that the buckling and unbuckling time was
16 any different between the CR-V and any other vehicles based on his studies, which
17 he created out of whole cloth, Dr. Young struggled mightily to actually define the
18 standard:

19
20 Q. What was the standard that you were implying in connection with your
21 studies to determine whether or not, or what was going to be deemed to be
22 material?

23 A. I would say the data tells us that the interactions of individuals with the
24 CR-V restraints is not substantially different from other vehicles. So based
25 on the data set that we've collected that involves peer vehicles, we can
clearly see that the CR-V is typical of that group and not atypical in any
way.

26 * * *

27 Q. Okay And with respect to the timing aspect, did you have a

1 predetermined metric for differential and timing that you believed was going
2 -- that you were going to utilize in connection with timing -- just timing
3 differential being material versus timing differential being not material?

4 A. I had no a prior value in mind.

5 Q. Okay. So the metric was then just for materiality regarding the timing
6 differential was going -- was -- is subjective?

7 A. Well, it's based on the data set that we found with this data collection
8 process. And really it's based on the distribution of times that we collected
9 across the various vehicles for all subjects included.

10 Q. So as you sit here today, can you tell me, other than subjectively, what
11 the metric for timing differential would have been that would have resulted
12 in you determining that it was material?

13 A. Depends, right...

14 Pl. Ex. QQ at 60:18-61:3; 61:20-63:11.

15 In addition to being unable to articulate the standard he used, Dr. Young's
16 conclusions contain numerous methodological deficiencies, all of which support
17 limiting the opinion.

18 First, the averages reported in Dr. Young's Report do not reflect real-world
19 conditions. The participants were given practice trials that were not captured by
20 the GoPro cameras, the timing of these trials was not measured or reported, and the
21 timing of these trials was not factored into the averages that Dr. Young presented
22 in his Report. *Id.* at 103:15-24. It seems apparent that, the more often participants
23 practiced buckling and unbuckling, the more adept they would become at buckling
24 and unbuckling within the finite period of time of the study. The results, then, do
25 not account for any user of the vehicles that may be using the seat belts for the first
26 time ever or even for the first time in a while. But when presented with that
27 concern, Dr. Young merely explained that he "didn't really look at the extent to
28 which extended trials and practice would change performance outcome." *Id.* at

1 88:6-18. Nor can anyone reviewing Dr. Young's Report or data draw a conclusion
2 about whether trials and practice would change performance outcome, because Dr.
3 Young did not videotape the trials or attempt to measure the buckling and
4 unbuckling times of those trials. *See Gonzalez v. Harley-Davidson Motor Co.*, No.
5 CV-04-0023-PHX-NVW, 2005 WL 8160757, at *2 (D. Ariz. Aug. 23, 2005)
6 (findings in part that expert's failure to quantify results from trial runs rendered
7 opinion unreliable). This gross oversight (if not purposeful manipulation of data)
8 limits the reliability of the data.

9 Second, the method of measuring the time Dr. Young used was not
10 grounded in any academic or scientific literature. He set up GoPro cameras in each
11 of the vehicles, which displayed time to the nearest whole second (as opposed to
12 tenths of seconds), and videotaped the participants buckling and unbuckling the
13 seat belts at various seating positions. Dr. Young did not refer to the FMVSS
14 guidelines, SAE guidelines, or point to any specific academic or scientific
15 literature for his decision to gather data this way. Pl. Ex. QQ at 100:17-103:14.

16 He then had two research assistants review the video, listen for the buckling
17 and unbuckling "clicks," and then document the time they heard the "clicks" in
18 order to calculate the average times he presented in Tables 1 and 2. Pl. Ex. WW, at
19 17, 20; Pl. Ex. QQ at 108:18-109:8. The research assistants were to serve as a
20 cross-check for one another, but there are no notes or records of any method of
21 handling disagreements on time measurements, other than that they simply
22 discussed their differences until they came to a resolution. Pl. Ex. QQ at 113:15-
23 114:4. Dr. Young does not account for the rate of error, but it would likely be
24 significant, given that measurement of the "clicks" is based purely on a human's
25 ability to hear the audio and stop the video, at the precise moment the "click" is
26 heard, and that the video rounds to the nearest whole second. Instead of pointing
27 to any academic or scientific literature for this methodology for collecting and

1 analyzing data, Dr. Young vaguely explained that this protocol was derived from
 2 “standard practice with regard to video analyses and ensuring that these types of
 3 methodologies represent the kinds of measurements that are obtained in an
 4 accurate way.” *Id.* 114:12-23.

5 It is not surprising that Dr. Young does not cite to any literature for this
 6 protocol, because there is nothing scientific about it. This method of recording,
 7 collecting, and analyzing the data is entirely unreliable, and undermines Dr.
 8 Young’s conclusions. *See Cabrera v. Cordia Corp.*, 134 F.3d 1418, 1422 (9th Cir.
 9 1998) (excluding expert who “provided no explanation of ‘precisely how [he] went
 10 about reaching his conclusions’ regarding the accuracy of his testing measure, and
 11 could not ‘point to some objective source . . . to show that [he has] followed the
 12 scientific method, as it is practiced by (at least) a recognized minority of scientists
 13 in [his] field.”” (quoting *Lust ex rel. Lust v. Merrell Dow Pharms. Inc.*, 89 F.3d 594
 14 (9th Cir. 1996))).

15 Next, with respect to Study 2, Dr. Young did not provide any academic or
 16 scientific explanation as to why the results of just three participants were sufficient
 17 to render his methodology and conclusions reliable—his only reason for using just
 18 three participants for Study 2, in fact, was that “[they] didn’t have enough time to
 19 do a full study with more individuals.” Pl. Ex. QQ at 139:3-10. Dr. Young further
 20 testified that Study 2 “captures essentially the same kinds of information that we
 21 describe in Study 1,” and that, because “these same trends are very similar to what
 22 we saw in the first study, [he did not] see any reason why this data set cannot also
 23 supplement that first study.” *Id.* at 139:7-140:8. But he provides no basis for his
 24 conclusion that observing only three participants is scientifically sufficient to
 25 “supplement that first study.”

26 Notwithstanding the methodological deficiencies, the data does not support
 27 Dr. Young. He has no basis to conclude that, “We found no evidence that buckling

1 or unbuckling times were atypical in the Honda CR-V in any of the configurations,
 2 as compared to other test vehicles" (Pl. Ex. WW at 13, 16), because his own data
 3 from his studies show just the opposite: contrary to his Report's written
 4 conclusions, the data indicate that the crossed-belt configurations in the CR-V,
 5 Rogue, RAV4, and Equinox consistently required more time to buckle and
 6 unbuckle when the center rear occupant position was occupied and the seat belt in
 7 use.

8 For example, the difference between buckling with an empty middle seat
 9 versus a child care seat in a Forester was 11%, but in the Class Vehicle, the
 10 difference was **91%**. Pl. Ex. QQ at 123:15-125:151 Pl. Ex. II ¶ 10. In fact, in **every**
 11 vehicle with the crossed-belt configuration, it took participants longer to buckle
 12 and unbuckle in all conditions than it did in the vehicles with the uncrossed-belt
 13 configurations (the Forester and Escape). Dr. Young inexplicably maintains the
 14 position that these percentage differences do not constitute a "material difference"
 15 but **could not point to any metric** whereby a time differential **would** constitute a
 16 "material difference," in his opinion. *See id.* at 131:2-24. This is because, as set
 17 forth above, Dr. Young has employed no academic, scientific, or industry
 18 methodology in analyzing and reporting his data. Moreover, Dr. Young cannot
 19 support his conclusions with experience in seat belt design and safety, and he is
 20 unable to identify any specific academic, scientific, or industry literature to support
 21 his methodology. His conclusions are, therefore, unreliable and should not be
 22 given any weight.

23 As Dr. Young's data makes clear, in all of the vehicles that had a crossed-
 24 belt configuration (the CR-V, Rogue, RAV4, and Equinox), study participants took
 25 longer to buckle and unbuckle their seat belts than they did with the Forester and
 26 Escape, which have uncrossed-belt configurations. Pl. Ex. II. ¶ 10. Dr. Young
 27 included vehicles with crossed-belt and uncrossed-belt configurations in his

1 studies, but other than collecting the data, he conducted no analysis whatsoever
 2 comparing the averages of the timing differentials between the crossed-belt
 3 vehicles and the uncrossed-belt vehicles, specifically. Pl. Ex. QQ at 112:16-25.
 4 Had Dr. Young done so, the data clearly shows that the crossed belts significantly
 5 increase the time to buckle and unbuckle, even in the ideal environment of his test
 6 conditions. Pl. Ex. II ¶¶ 10-11.

7 Moreover, Dr. Young acknowledged during his deposition (but not in his
 8 Report) that he was aware that certain of the vehicles he chose for his studies have
 9 since undergone design changes to uncross the seat belt buckles, including the
 10 Rogue, RAV4, and Equinox. Pls. Ex. QQ at 95:1-96:13. Thus, the CR-V is the
 11 sole vehicle he reviewed which still has the crossed buckle configuration. Pl. Ex.
 12 II ¶ 6. Not surprisingly, that critical fact was also ignored by Young in reaching
 13 his conclusions.

14 **II. Certain of Dr. Young's Conclusions Are Irrelevant Because They Do**
 15 **Not Pertain to Plaintiffs' Theory of the Case**

16 As noted above, Dr. Young's methodology purports to compare the Class
 17 Vehicle to "peer vehicles," but he does so without isolating the variable at issue—
 18 whether the seat-belt configuration is crossed, the defect in this case. His
 19 analysis—if you can call it that—does not, then, pertain to the relevant issue:
 20 whether the defective ***seat belt configuration*** of the Class Vehicles renders them
 21 unable to safely seat three rear seat passengers. Instead, it simply finds that other
 22 "peer" vehicles may suffer from a similar defect, which is unhelpful to the trier of
 23 fact and is, therefore, irrelevant.⁴

24 Dr. Young draws several additional conclusions in his Report, including
 25

26 ⁴ Dr. Young even acknowledged during his deposition that certain of the "peer"
 27 vehicles he chose have since undergone design changes to uncross the seat belt
 buckles, including the Rogue, RAV4, and Equinox. Pl. Ex. QQ at 95:1-96:13.

1 “[a]dult occupants can easily access and operate the safety restraints in the rear seat
 2 of the subject Honda CR-V with (and without) occupants or child car seats in the
 3 other seat positions.” Pl. Ex. WW at 26. This conclusion, however, is irrelevant.
 4 Dr. Young’s conclusion does not even reach the defect as defined in Plaintiffs’
 5 Motion for Class Certification: that because of the defective seat belt
 6 configuration, the Class Vehicles cannot *safely* seat three passengers in the rear of
 7 the CR-V. Mot. for Class Cert. at 1, 16. Plaintiffs have not argued that three
 8 passengers cannot physically fit in the rear of the Class Vehicles, or that the safety
 9 restraints in the rear are inoperable simultaneously. Plaintiffs’ theory is that
 10 because of the defective seat belt configuration, simultaneous use of all three safety
 11 restraints in the rear of the Class Vehicles is *unsafe*. Dr. Young’s conclusion does
 12 not pertain to this theory, will not help the trier of fact, and is, therefore, irrelevant
 13 and should not be given any weight.

14 Likewise, Dr. Young concludes that “[p]assenger buckling behavior in the
 15 rear seat of the subject Honda CR-V is consistent with and similar to typical
 16 handling actions as well as across peer vehicles within its class.” Pl. Ex. WW at
 17 26. But, again, Plaintiffs do not allege that the defect at issue is that it is more
 18 difficult to buckle or unbuckle the seat belts in the Class Vehicles as opposed to
 19 comparator vehicles, and Dr. Young admitted as much during his deposition. Pl.
 20 Ex. QQ at 35:13-36:22. Even if this conclusion were relevant, as set forth above,
 21 Dr. Young’s data does not support this conclusion.

22 Dr. Young also draws the conclusion that “[b]uckling and unbuckling
 23 behavior in the subject Honda CR-V and its peers is related to individual
 24 characteristics and situational factors rather than vehicle design characteristics.”
 25 Pl. Ex. WW at 26. This conclusion is irrelevant. First, as discussed above,
 26 Plaintiffs do not allege that the Class Vehicles are defective as compared to other
 27 vehicles, and whether users have difficult buckling or unbuckling rear seat belts in

1 vehicles other than the Class Vehicles has no bearing on whether the seat belt
 2 configuration in the Class Vehicles is defective. Further, Dr. Young's discussion
 3 of handling actions and visual behavior, and the extent to which those principles
 4 are incorporated into his conclusions, is irrelevant. *See id.* at 9-10 (discussing
 5 Ebert & Reed and Monnier, et al. buckling strategies). While these human factors
 6 may impact the *way* in which users buckle or unbuckle their seat belts, those
 7 differences are reflected in the *time* it takes a user to do so. Those behaviors on
 8 their own, then, have no bearing on whether the seat belt configuration is safe. Dr.
 9 Young discusses various hand placements and buckling strategies, but conducted
 10 no analysis to determine whether these various strategies make a difference in an
 11 average participant's ability to buckle or unbuckle their seat belts, and makes no
 12 connection between these varying strategies and the safety of the seat belt
 13 configuration.

14 These human factors variations⁵ are further irrelevant because of how Dr.
 15 Young decided to report his data. Dr. Young averaged the time each participant
 16 took to buckle and unbuckle themselves in each vehicle. Because of that, there is
 17 nothing to suggest that any variation in hand placement, gaze, or other human
 18 factor resulted in faster or slower buckling or unbuckling for any given individual
 19 compared to another. These observations, and conclusions that flow from them,
 20 are irrelevant and should not be given any weight by the Court.

21 **CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully request that the Court give

24 ⁵ Further, courts closely scrutinize human factors analyses, in part, because how
 25 malleable and subjective they are. *See, e.g., Graves v. Mazda Motor Corp.*, 675 F.
 26 Supp. 2d 1082, 1103 (W.D. Okla. 2009) (although human factors engineering is a
 27 legitimate discipline, in a forensic setting, the application of human factors invites
 28 close scrutiny as human factors principles can be highly subjective and thus
 conveniently malleable).

1 little, if any, weight to Dr. Young's Report in connection with Defendant's
2 Opposition, MSJ, or MTE Whitman.

3
4 Dated: August 3, 2020

SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP

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6 By: /s/ Kolin C. Tang

7 Kolin C. Tang
8 1401 Dove Street, Suite 540
9 Newport Beach, CA 92660
10 Telephone: (323) 510-4060
Facsimile: (866) 300-7367
Email: ktang@sfmslaw.com

11 James C. Shah
12 SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP
13 1845 Walnut Street, Suite 806
14 Philadelphia, PA 19103
15 Telephone: (610) 891-9880
Facsimile: (866) 300-7367
16 Email: jshah@sfmslaw.com

17 Robert W. Murphy
18 MURPHY LAW FIRM
19 1212 SE 2nd Ave.
20 Ft. Lauderdale, FL 33316
21 Telephone (954) 763-8660
Facsimile: (854) 763-8607
Email: rwmurphy@lawfirmmurphy.com

22 Ryan R. Frasher
23 THE FRASHER LAW FIRM, P.C.
24 3209 W. Smith Valley Road, Ste. 253
25 Greenwood, IN 46142
26 Telephone (317) 300-8844
Facsimile: (317) 218-4501
27 Email: rfrasher@frasherlaw.com

1 *Attorneys for Plaintiffs and the Proposed*
2 *Class*
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CERTIFICATE OF SERVICE

I, Kolin C. Tang, hereby certify that on the 3d day of August, 2020, the foregoing Notice Of Motion And Motion To Limit Consideration Of The Expert Report Of Douglas Young, Ph.D.; Memorandum Of Points And Authorities was served via electronic mail and ECF on the following counsel of record:

Michael L. Mallow (mmallow@shb.com)
Rachel A. Straus (rstraus@shb.com)
SHOOK, HARDY & BACON LLP
2049 Century Park East, Suite 3000
Los Angeles, CA 90067

/s/ *Kolin C. Tang*
Kolin C. Tang